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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HUGH B. SVENDSEN and AL ISSA

Appeal 2009-006993
Application 10/813,839
Technology Center 2400

Before JEAN R. HOMERE, ST. JOHN COURTENAY III, and
THU A. DANG, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-9, 15-25, and 31-34. The Examiner has objected to claims 10-14 and 26-30 as being dependent upon a rejected base claim. (Final Office Action 9). We have jurisdiction under 35 U.S.C. § 6(b).

We Affirm.

Invention

Appellants' invention relates generally to the field of peer-to-peer online photosharing. More particularly, the invention on appeal is directed to a method and system for providing Web browsing through a firewall within the peer-to-peer network. (Spec. 1).

Representative Claim

1. A method for providing a Web browser running on a computer with HTTP access to a peer server located behind a firewall in a peer-to-peer network, comprising;

(a) providing the peer-to-peer network with a proxy server;

(b) registering an outbound socket connection with the proxy server by the peer server;

(c) in response to the proxy server receiving an HTTP request to access the peer server from the Web browser, translating the HTTP request into a request packet and sending the request packet to the peer server; and

(d) in response to the peer server receiving the request packet, translating the request packet back into the HTTP request and responding to the request, thereby enabling generic web traffic to flow.

Examiner's Rejections

1. Claims 1-4 and 17-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Sit (US 6,349,336 B1).

2. Claims 5-7, 15, 16, 21-23, and 31-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Sit.
3. Claims 8, 9, 24, and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Sit and Gupta (US 6,917,965 B2).

First-stated rejection under § 102 over Sit

Claims 1-4 and 17-20

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal regarding the first-stated rejection anticipation rejection over Sit:

> Under §102, did the Examiner err in finding that Sit discloses "translating the HTTP request into a request packet and sending the request packet to a peer server", within the meaning of independent claims 1 and 17?

FINDINGS OF FACT

1. Sit discloses wrapping requests from one or more browsers with code which is recognized by the firewall as a response rather than as a request, which would be blocked by the firewall. (Col. 7, ll. 50-53).

ANALYSIS

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal for the first-stated rejection on the basis of representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants urge the patentability of representative claim 1, as follows:

> Appellants submit that *Sit* does not disclose or suggest translating an HTTP request into a request packet and sending the request packet to a peer server, which is located behind a firewall. Instead, *Sit* discloses fooling a firewall in order to pass data to a browser, which is behind the firewall. More specifically, Sit discloses wrapping a request sent from the browser 314E to the web server 3081, which is behind the firewall 305, such that, to the firewall 305, the request appears as a response from the browser 314E to a request sent by the web server 308I. (See Sit, col. 7,11. 50-57). As is well known, wrapping includes a header, which precedes encapsulated data and a trailer, which follows the encapsulated data such that the encapsulated data is not viewable to a firewall. Wrapping does not involve translating an HTTP request into a request packet. In fact, *Sit* teaches away from the present invention in that *Sit* discloses fooling a firewall into allowing the transmission of a packet by altering header information such that the packet appears as something it is not, i.e., instead of being a request, the packet appears as a response.

(App. Br. 9-10).

At the outset, we find Appellants' "teaching away" argument is misplaced, because the Examiner has rejected claims 1-4 and 17-20 under 35 U.S.C. § 102. Our reviewing court has determined that "[t]eaching away is irrelevant to anticipation." *Seachange International, Inc., v. C-Cor, Inc.*, 413 F.3d 1361, 1380 (Fed. Cir. 2005).

Moreover, based upon our review of the record, we are not persuaded by Appellants' arguments that the Examiner's claim interpretation is unreasonable or inconsistent with Appellants' Specification. Specifically,

the Examiner broadly but reasonably construes the claimed translation of a HTTP request as "any modification to a HTTP request into a packet, where the packet is changed into another form, and where the packet includes a request from a sender to a destination." (Final Office Action 3, ll. 1-3). [1]

Given this construction, we find no error in the Examiner's finding that Sit discloses translating the HTTP request into a request packet and sending the request packet to the peer server, within the meaning of independent claims 1 and 17. Sit discloses wrapping requests from one or more browsers with code which is recognized by the firewall as a response rather than as a request, which would be blocked by the firewall. (FF 1). Thus, Sit describes modifying a HTTP request by wrapping it with code. Therefore, we agree with the Examiner that Sit's request packet is changed (translated) into another (wrapped) response form, and the wrapped packet includes a request from a sender to a destination. (FF1; Ans. 10).

Because "applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citing *In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004)). Given the aforementioned teachings in Sit and the breadth of Appellants' representative claim 1, we find the weight of the evidence supports the Examiner's position.

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[1] "[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)).

On this record, we find the Examiner did not err in rejecting representative claim 1. Accordingly, we affirm the § 102 rejection of claim 1, as well as claims 2-4 and 17-20 which fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Second-stated rejection under § 103 over Sit

Claims 5-7, 15, 16, 21-23, and 31-34

Regarding claims 5-7, 15, 16, 21-23, and 31-34, Appellants "submit that *Sit* does not disclose all the features recited in claims 5-7, 15, 16, 21-23, and 31-34. As detailed above, *Sit* does not disclose or suggest all the features recited in claim[s] 1 or 17, the base claims from which claims 5-7, 15, 16, 21-23, 31, and 32 ultimately depend." (App. Br. 12, ¶ 3).

However, we find no deficiencies regarding Sit for the reasons discussed *supra* regarding claims 1 and 17.

Regarding independent claims 33 and 34, Appellants additionally submit that "*Sit* does not disclose that in response to a peer node receiving an HTTP response from the Web Server, translating an HTTP packet into a response packet and sending the response packet to a proxy server." (App. Br. 13, ¶ 1).

However, a statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(vii). Moreover, mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); and

Ex parte Belinne, No. 2009-004693, slip op. at 7-8 (BPAI Aug. 10, 2009) (informative), *available at* http://www.uspto.gov/web/offices/dcom/bpai/its/fd09004693.pdf.

On this record, we affirm the Examiner's § 103 rejection of claims 5-7, 15, 16, 21-23, and 31-34 over Sit.

Third-stated rejection under § 103 over Sit and Gupta

Claims 8, 9, 24, and 25

Regarding claims 8, 9, 24, and 25, Appellants aver that "[a]s detailed above, Sit does not disclose or suggest all the features recited in claim 1 or 17, the base claims from which claims 8, 9, 24, and 25 ultimately depend. Moreover, Gupta does not overcome the previously noted shortcomings of *Sit*." (App. Br. 13, ¶ 2).

However, we find no deficiencies regarding Sit for the reasons discussed *supra* regarding claims 1 and 17. Therefore, we affirm the Examiner's § 103 rejection of claims 8, 9, 24, and 25 over the combination of Sit and Gupta.

DECISION

We affirm the § 102 rejection of claims 1-4 and 17-20.

We affirm the § 103 rejections of claims 5-9, 15, 16, 21-25, and 31-34.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

ORDER

AFFIRMED

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